

ICC Inquiries Jeopardised

Chief prosecutor warns that lack of protection discourages people from taking part in ICC investigations. The International Criminal Court, ICC, faces a big challenge protecting individual victims and witnesses of war crimes who are working with the court.

Issues surrounding the security of victims and witnesses recently dealt a serious blow to investigations into two of the three situations being dealt with by the court - Darfur and the Democratic Republic of Congo, DRC.

On June 14, 2006 the ICC chief prosecutor, Luis Moreno-Ocampo, told the United Nations Security Council that the absence of a "functioning and sustainable system" for victim and witness protection prohibits an "effective investigation inside Darfur".

He added that the lack of protection is a "strong disincentive" to those who would otherwise come forward to participate in investigations for the ICC, and that "in addition to a moral duty, my office is under a legal obligation to protect victims and witnesses".

INVESTIGATIONS SUSPENDED

The chief prosecutor said that the problems with victim and witness protection represented a "serious obstacle" to criminal proceedings, and all investigations into Darfur have been forced outside Sudan itself and into thirteen other countries.

Similar impediments have also been manifest in the trial of Thomas Lubanga from the DRC, a warlord who stands accused of conscripting child soldiers to take up arms and fight.

As former leader of the Union des Patriotes Congolais, UPC, one of the main rebel militias in the province of Ituri in northeastern Congo, Lubanga was arrested after months of investigations and is currently imprisoned in The Hague.

At the beginning of June, the court announced a three-month delay to his confirmation hearing, citing the need for greater victim and witness protection measures.

Then on June 28 the prosecution announced the suspension of further investigations into other potential charges against Lubanga, again citing the need to provide adequate protection to victims and witnesses.

It is hard to see how these problems will be overcome in Darfur and the DRC, when the ICC does not have its own police force or law enforcement agency - apart from incidental help from UN peacekeepers who happen to be in the right place at the right time.

The ICC is normally beholden upon nation states to ensure the protection of those called to give evidence in a trial. But how can authorities in a country that has referred its crisis to the ICC - because it feels unable to deal with it alone - begin to achieve this?

NUANCED PROTECTION

Instead of only using witnesses to give evidence in court, the ICC is uniquely inviting victims of war crimes to assist in the investigations into the crimes and giving them a say during the trials of accused war criminals.

For the first time in international law, victims are being represented by their own attorneys, and may, on occasion, be permitted to put questions to the accused on trial. This obliges the court to look after those who are working with it. Such interventions were not permitted in previous ad hoc international criminal tribunals.

The senior trial lawyer in the ICC prosecution against Lubanga, Ekkehard Withopf, warned that anyone testifying in the case against Lubanga is potentially at risk. He said that, if authorised by the pre-trial chamber, any identifying features of witnesses can be hidden from the public, but victims "must be aware that applying for participation may change their lives".

As a result, Carla Ferstman, director of REDRESS, a London-based human rights organisation which concentrates on victims of torture, told IWPR that in a conflict zone, such as DRC, protection must be given in a much more nuanced way "involving different actors playing different confidential roles".

And the ICC has to weave itself into this web of discretion.

PROTECTING THE UNPROTECTABLE?

A spokesman for an African NGO which supported the creation of the ICC told IWPR that even before the announced postponement of the Lubanga hearing “there was big concern about the security of victims in the DRC”.

Preferring not to be named, the spokesman said that after the transfer of Lubanga to The Hague, those backing him in Ituri threatened that “if they did not get him back, they would do worse things than before. This puts victims in a very dangerous position”.

This becomes even more complicated when the ICC is trying to operate in a country which has not invited its participation, such as Sudan in the case of that country's western Darfur region. So in order to elicit information from victims without raising powerful eyebrows in Khartoum, Sudan's capital, and jeopardising their safety, court staff are working through intermediaries who have pre-existing relationships with victim communities.

However, Leslie Lefkow, who works in the Africa division of Human Rights Watch, told IWPR that even developing ties with local intermediaries in Darfur is problematic. It is an “extremely difficult environment for civil society, and there is a limit to which organisations are going to be willing to participate with the ICC”, she said.

Even though Darfur is the “territory of a government hostile to the ICC”, it is fundamental for the court to gain access, because victim protection is “difficult to do by remote control, and best done on the ground”, said Lefkow.

EXTREME PRESSURE

Hafiz Mohamed, Sudan programme coordinator for the human rights organisation Justice Africa, with offices in three African capitals and in London, said that even if the Sudanese government complied with the ICC, Khartoum would not have the ability to control the militias.

He explained that militias, especially in north Darfur, are “causing most of the crimes and killing more people than the government”. Mohamed said the militias are acting “on their own accord” and the only way of securing victim and witness protection is to “get them out of Darfur”.

However, he said that even countries that directly neighbour Sudan are not secure. “Government-backed Janjaweed militiamen are crossing borders to Chad and killing people,” he said.

In fact, the ICC suspended investigations from Chad in April 2006 because of clashes between the Chad government and its own indigenous rebel forces as well as invaders from Sudan. Instead, Mohamed suggested that victims of the Darfur conflict should be taken to a far-off country such as the United Arab Emirates.

But what if victims and witnesses don't want to leave their homes?

Mohamed told IWPR that many tribal leaders he has spoken to tell him that people are “keen to participate and tell their stories, but want to come back to their lives in Darfur. They don't want to leave their homes”.

He said that the only thing the ICC can do to restore security in Darfur is to build up the rule of law. “Aiding the full implementation of the Darfur Peace Agreement (DPA) is the only way victims can ever be made safe. The killing is still going on, and the full implementation of the DPA is the only guarantee of the safety of victims and witnesses.”

The Sudanese government and the largest rebel group in the Darfur region signed the DPA peace deal in May, with the aim of ending three years of conflict. Two smaller rebel groups refused to sign. So far the agreement has failed to win the support of people in Darfur and fighting has continued.

SECONDARY VICTIMISATION

The ICC has set up a Victims and Witnesses Unit to implement protective measures and provide security arrangements for witnesses and victims who appear before the ICC, as well as others who are at risk because of the testimony given by witnesses.

The unit is staffed by experts in trauma, including that related to crimes of sexual violence. One protection officer, who asked not to be named, told IWPR that he is anxious to ensure that an association

with the court does not lead to secondary forms of victimisation. For example, rape victims may have to be relocated to a third country if they are threatened as a result of their participation in ICC procedures. “Their whole lives change,” said the officer. “Contacts at home cease to exist, and they have to be aware that, whatever they do, someone might be trying to trace them.”

He said that his unit has to find ways within environments of insecurity to allow victims to participate in hearings while retaining some element of anonymity. Systems have to be developed through which “opinions can be given to the court in a more structured way, like one individual representing a group”.

However, the protection officer also stressed that while the ICC will do everything in its power to protect a victim, their involvement is voluntary and they need to realise that the protection afforded them may be limited.

He said the ICC will always advise victims on the risks they might face, but if a specific threat arises and their continued wellbeing is more important than their participation as a victim “they should reconsider their participation”.

Making it clear that the decision to participate is theirs, he said the ICC can give objective advice but “it is not fair if we persuade them to participate, and for this to have negative consequences for the rest of their lives”.

Katy Glassborow is a regular IWPR contributor in The Hague.

Location: Africa

Focus: ICC - International Criminal Court

Source URL: <https://iwpr.net/global-voices/icc-inquiries-jeopardised>